

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 87 of 2014

Mst. Anwara Begum W/o Abdul Shakoor Appellant

Versus

1. Muhammad Akram
2. Muhammad Aslam
3. The State Respondents

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Criminal Appeal No. 112 of 2014

Mst. Halima Bibi W/o Haish Muhammad Appellant

Versus

1. Muhammad Akram
2. Muhammad Aslam
3. The State Respondents

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Mst. Anwara Begum, appellant in Crl. Appeal No. 87 of 2014 in person.

Mst. Halima Bibi, appellant in Crl. Appeal No. 112 of 2014 in person.

Mr. Zahoor Shah, DPG for State.

JUDGMENT

Omar Sial, J. The appellants Anwara Begum and Halima Begum were alleged to have illegally dispossessed Mohammad Aslam Gujjar from his plot of land in the Korangi Industrial Area. The appellants have impugned a judgment dated 13-3-2014 passed by the learned 4th Additional Sessions Judge Karachi East. In terms of the said judgment, the appellants were convicted for an offence under section 3(2) of the Illegal Dispossession Act 2005 and sentenced to suffer three years rigorous imprisonment and pay a fine of Rs. 10,000 each or suffer another six months of imprisonment upon failure to pay the fine.

2. According to the prosecution story, a man named **Mohammad Aslam Gujjar (P.W. 1)** purchased a plot of land bearing number 225 in Sector 6-B of Mehran Town situated in the Korangi Industrial Area of Karachi. He along with his brother (apparently named Mohammad Akram) and another **Wasif Hussain (PW-2)** went for a condolence to the province of Punjab. When he returned after two weeks, he saw that one Chaudhry Talat Hussain had encroached upon his land. Upon inquiry from his neighbors he learnt that the Anwara Begum and Haleema Begum (both appellants in the captioned

appeals) along with some others were in occupation of his plot of land. Aslam Gujjar also discovered that the same party had also illegally occupied the adjacent plot of land bearing number 224 which was owned by one Liaqat. Aslam Gujjar asked the encroachers to leave his land but was told by Chaudhry Talat Hussain that he will do so if he is given Rs. 50,000.

3. Wasif Hussain testified at trial that he had arranged the purchase of the land in question for the complainant Aslam Gujjar. He further testified that when he returned from Punjab, he saw Chaudhry Talat Husain, Mumtaz Mai, Muzamil Hussain and Mudassir as the persons who had illegally occupied the land. He did not mention the name of the appellants. Upon his complaint to the Karachi Development Authority, representatives of the KDA had come and demolished the structures built on the said land. Subsequently, when the KDA team had left he learned that applicant Anwara Begum was claiming that she was the owner of the said plot having bought the same from one Muzamil.

4. **Mohammad Mairaj Ahmed (CW-1)** was examined as court witness. He was an Assistant Director of KDA and was asked to bring the record pertaining to the land in question. He testified that according to his record the last document that existed in the record was the transfer in the name of Mohammad Akram and Mohammad Aslam however he admitted that he had no record to show that possession was given to Mohammad Akram. To the contrary, the letter of possession in the KDA records was in the name of one Mohammad Islam.

5. **Inspector M. Nadeem Ghouri (CW-2)** was also examined as a court witness. He testified that when he visited the land in question he saw the appellants in possession of the land. While the Inspector claimed that several people from the neighborhood were also present, he could not produce any witness who could testify that the complainant and not the appellants were in possession of the land when the illegal dispossession was said to have been effected.

6. The appellants in their section 342 Cr.P.C. statements pleaded innocence and further stated that they had nothing to do with the plot of land i.e. 225 in Sector 6-B of Mehran Town.

7. I have heard the appellants in person as due to being extremely poor the appellants were unable to retain a counsel who could argue their appeals for them. On a couple of occasions counsel filed vakalatnamas on their behalf but then failed to appear. I have also heard the learned DPG. The complainant remained unrepresented despite

notices and the appeals being pending in this court for four years. My observations are as follows.

8. The testimony of the complainant Mohammad Aslam Gujjar and Wasif Hussain was vague and sketchy as to how he established the ownership of the plot in question as well as whether the story he narrated as to his leaving for a condolence and coming back and finding the appellants amongst others having illegally dispossessed him. He admitted at trial that he had not made available the chain of title documents and that he had no proof of his assertion about leaving to Punjab. Gujjar did however produce a Transfer Order in his name and in that of one Mohammad Aslam, however, he could not prove that there was any construction on the said land to show that he was indeed in possession of the same and when he says that he was dispossessed.

9. Both Mohammad Aslam Gujjar and Wasim Hussain were unable to show conclusively their nexus with the plot in question, either as undisputed owners or as having being in possession at the time they complained that they were illegally dispossessed by the appellants. Further, it appears from the testimony of both these main witnesses that the main protagonist was Chaudhry Talat Hussain and not the appellants. The two witnesses could not give a date when they were dispossessed. They could produce no witness from the properties of the adjacent lands who could also corroborate their story. The report filed by the SHO shows that when he visited the land in question he found the appellants in possession.

10. One is at a loss to understand as to why the KDA team would come and demolish the structures built on the land, by the complainant himself, if the complainant had a clean title to it and was legally and lawfully in possession of the same. Like the complainant, Wasif Hussain too, was unable to produce a clean chain of title documents or show that the complainant was actually in possession of the said land when the appellants are said to have illegally dispossessed the complainant.

11. The appellants are two old ladies who due to poverty were unable to retain counsel. A mere look at them suggests that I would be rather incredible that these two ladies in their frail condition could actually illegally dispossess the complainant. Perhaps they were used as innocent tools by the main accused Chaudhry Talat Hussain, however, nothing was brought on record to even establish that nexus.

12. The prosecution was unable to prove its case against the appellants beyond reasonable doubt. The benefit of such doubt should have gone to the appellants in accordance with well established principles of law.

13. In view of the above, the appeals are allowed. The appellants are acquitted of the charge. They are present on bail. Their bail bonds stand cancelled and surety discharged. The surety furnished by Mst. Musarrat Bibi may be returned to her after due identification.

JUDGE